

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2557
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-206*

13 **GREGORY LEE ZOMALT**
6110 1/2 Overhill Drive
Los Angeles, CA 90043

A C C U S A T I O N

14 Registered Nurse License No. 555121

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about May 18, 1999, the Board issued Registered Nurse License No. 555121 to
23 Gregory Lee Zomalt (Respondent). The Registered Nurse License was in full force and effect at
24 all times relevant to the charges brought herein and will expire on January 31, 2013, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

8. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

1 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.

6 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
7 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
8 or the possession of, or falsification of a record pertaining to, the substances described in
9 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
10 thereof. . . ."

11 9. Section 2764 provides that the expiration of a license shall not deprive the Board of
12 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision
13 imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an
14 expired license at any time within eight (8) years after the expiration.

15 **REGULATORY PROVISION**

16 10. California Code of Regulations, title 16, section 1444 states, in pertinent part:

17 A conviction or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
20 safety, or welfare. . . ."

21 **COST RECOVERY**

22 11. Section 125.3 provides that the Board may request the administrative law judge to
23 direct a licensee found to have committed a violation or violations of the licensing act to pay a
24 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

25 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

26 12. Marijuana (Cannabis) is a hallucinogenic Schedule I controlled substance as defined
27 in Health and Safety Code section 11054(d)(13) and a dangerous drug according to section 4022

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
4 (f), in conjunction with California Code of Regulations, title 16, section 1444, in that on or about
5 April 19, 2011, Respondent was convicted of a crime substantially related to the qualifications,
6 functions or duties of a registered nurse which to a substantial degree evidences his present or
7 potential unfitness to practice in a manner consistent with the public health, safety, or welfare, as
8 follows:

9 a. On or about April 19, 2011, after pleading nolo contendere, Respondent was
10 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an
11 equal to or greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled
12 *The People of the State of California v. Gregory Lee Zomalt* (Super. Ct. Los Angeles County,
13 2011, No. 1MP03225). The Court sentenced Respondent to one (1) day jail, place him on 36
14 months probation, ordered him to complete 22 days of community labor, and ordered him to
15 complete a 3-month First Offender Alcohol Program.

16 b. The circumstances underlying the conviction are that on or about March 29, 2011,
17 after driving his vehicle weaving across lanes, Respondent admitted to driving while under the
18 influence of alcohol with a tested BAC of 0.19/0.18%.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Alcohol Related Conviction)**

21 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
22 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about April 19,
23 2011, Respondent was convicted of a crime involving alcoholic beverages. Complainant refers to
24 and by this reference incorporates the allegations set forth above in paragraph 13, subparagraphs a
25 and b, inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of a Alcohol)**

3 15. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
4 2762, subdivision (b), on the grounds of unprofessional conduct, Respondent dangerously used
5 alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others, as
6 follows: On or about March 29, 2011, Respondent dangerously used alcoholic beverages.
7 Complainant refers to and by this reference incorporates the allegations set forth above in
8 paragraphs 13 - 14, inclusive, as though set forth fully.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Marijuana)**

11 16. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
12 2762, subdivision (b), on the grounds of unprofessional conduct, Respondent dangerously used
13 controlled substances to an extent or in a manner dangerous or injurious to himself or others, as
14 follows: On or about July 7, 2006, Respondent dangerously used marijuana, a controlled
15 substance and dangerous drug, when he tested positive for marijuana on a registered nurse pre-
16 employment drug screen. Complainant refers to and by this reference incorporates the allegations
17 set forth above in paragraphs 13 - 15, inclusive, as though set forth fully.

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19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct / Violate Act)**

21 17. Respondent is subject to disciplinary action under sections 2761, subdivisions (a) and
22 / or (d), in that Respondent committed acts of unprofessional conduct and / or acts violating the
23 Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations set
24 forth above in paragraphs 13 - 16, inclusive, as though set forth fully.

25
26 **PRAYER**

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 555121, issued to Gregory Lee Zomalt;

2. Ordering Gregory Lee Zomalt to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,

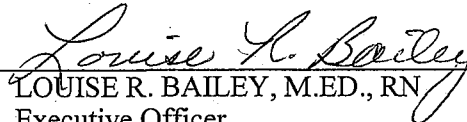
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3. Taking such other and further action as deemed necessary and proper.

DATED: September 25, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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